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Attorneys for Plaintiff Diamond Refractory Services, LLC

CLERK OF THE
DISTRICT COURT
THIRTEENTH JUDICIAL DISTRICT
2019 AUG 5 PM 2 24
FILED
CLERK

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

DIAMOND REFRACTORY SERVICES,
LLC,

Plaintiff,

v.

AECOM ENERGY & CONSTRUCTION,
INC., EXXON MOBIL CORPORATION,
DAN STETLER, THOMAS BUNTING,
JONATHAN PARSONS, and JOHN/JANE
DOE DEFENDANTS 1 through 5,

Defendants.

Cause No. *j* V 19 - 1111

Judge:

GREGORY R. TODD

**VERIFIED COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMES NOW, the above-named Plaintiff, Diamond Refractory Services, LLC, and for its claims against Defendants, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff Diamond Refractory Services, LLC (hereinafter "Diamond Refractory") is a Texas Limited Liability Company with its principal place of business in Harris County, Texas. All of the transactions and events which have given rise to this lawsuit occurred in

Yellowstone County, Montana. The real property subject to the construction lien sought to be foreclosed is located in Yellowstone County, Montana.

2. Defendant AECOM Energy & Construction, Inc. (hereinafter "AECOM") is an Ohio corporation doing business in Yellowstone County, Montana, which maintains its principal place of business in Greenwood Village, Colorado. Defendant AECOM is the original contractor and party with whom Diamond Refractory contracted to perform work on the real property subject of the construction lien sought to be foreclosed.

3. Defendant Exxon Mobil Corporation (hereinafter "Exxon") is a New Jersey Corporation doing business in Yellowstone County, Montana which maintains its principal place of business in Dallas County, Texas. Defendant Exxon owns real property (hereinafter the "Property") in Yellowstone County, Montana subject to the construction lien and which is more particularly described as follows:

Parcel 1 of Certificate of Survey No. 2065, located in Section 24, Township 01, North Range 26 East, MPM, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorded of Yellowstone County, Montana.

4. Defendant Dan Stetler is the Turnaround and Majors Section Supervisor for Defendant Exxon at its refinery in Billings, Montana and a resident and citizen of Yellowstone County. Defendant Stetler is responsible for Defendant Exxon's turnaround planning and execution at Defendant Exxon's refinery in Billings, Montana. Defendant Thomas J. Bunting is the Event Manager for Defendant Exxon at its refinery in Billings and a resident and citizen of Yellowstone County and participates in the management of Exxon's turnaround activities. Defendant Jonathan Parsons is the Mechanical Manager for Defendant Exxon at its refinery in Billings, Montana and a resident and citizen of Yellowstone County. Defendant Parsons is a member of Defendant Exxon's leadership team and responsible for the planning and execution of

all site maintenance and turnaround activities at Defendant Exxon's refinery in Billings, Montana.

5. John/Jane Doe Defendants 1 through 5 are entities or persons who at this point remain unknown and may have caused and/or contributed to the damages and losses suffered by Diamond Refractory.

6. The transactions between the parties occurred in Yellowstone County, Montana and the contract between Diamond Refractory and Defendant AECOM was to be performed in Yellowstone County, Montana.

7. This Court has jurisdiction over the parties, the Property, and the subject matter of this lawsuit.

8. Venue is proper in this Court.

FACTUAL BACKGROUND

9. Diamond Refractory realleges the allegations contained in ¶¶ 1-8 above.

10. On or about June 12, 2018, Diamond Refractory and Defendant AECOM entered into a contract under which Diamond Refractory would act as a subcontractor to Defendant AECOM, the general contractor to Defendant Exxon and perform refractory services in connection with Exxon's 2018 FCC-ALKY-Offsite Fall Turnaround (hereinafter the "Project").

11. Diamond Refractory furnished materials, labor and equipment for the installation of anchoring systems, and installation of refractory for the Project.

12. Diamond Refractory first furnished these services or materials for the Project on October 1, 2018 and last furnished services or materials on January 30, 2019.

13. Diamond Refractory furnished invoices to Defendant AECOM for the work performed at least monthly.

14. Defendant AECOM has not paid the invoices in full.

15. Defendants Stetler, Bunting, Parsons were aware of the materials, labor, and services being provided by Diamond Refractory as part of the Project and that Defendant AECOM was not paying Diamond Refractory for the value of the work and materials it provided. These individual defendants (Dan Stetler, Thomas J. Bunting, and Jonathan Parsons) are sued not only as agents of Defendant Exxon, but individually, because they benefited from, were actively involved with, and aware of, the decisions by Defendants AECOM and Exxon to accept the benefit of Diamond Refractory's materials, labor, and services as part of the Project while denying payment to Diamond Refractory for the same.

16. The amount that Defendant AECOM owes to Diamond Refractory for the work performed and labor and materials supplied to the Project is \$2,097,576.15. The debt carries interest at the statutory rate of 10% per annum.

17. Because Diamond Refractory was not paid the full amount for its work on the Project, Diamond Refractory was forced to file a Construction Lien against the Property with the Yellowstone County Clerk and Recorder as Document No. 3881212 on April 25, 2019. A true and correct copy of the Construction Lien is attached as Exhibit 1 and incorporated by reference.

18. Defendants have not posted a bond to supersede the Construction Lien.

COUNT I – BREACH OF CONTRACT

19. Diamond Refractory realleges the allegations contained in ¶¶ 1-18 above.

20. Defendant AECOM has breached its contract with Diamond Refractory by failing to pay Diamond Refractory the amounts due for its work on the Project.

21. Diamond Refractory is entitled to judgment against Defendant AECOM in the amount of \$2,097,576.15 and interest at the rate of 10% per annum from the date due until paid.

COUNT II – UNJUST ENRICHMENT AND QUANTUM MERUIT

22. Diamond Refractory realleges the allegations contained in ¶¶ 1-21 above.

23. Defendants knew about, and have received the benefit of, the labor, materials, and work performed or provided by Diamond Refractory on the Project and it would be inequitable for Defendants to retain such benefit without payment to Diamond Refractory for the value of the work and materials provided.

24. Defendants would be unjustly enriched by their receipt of the benefit of Diamond Refractory's work and provision of labor and materials on the Project without payment to Diamond Refractory for the reasonable value of its work, labor, and materials provided.

25. Diamond Refractory is entitled to the reasonable value of the work it has done and the labor and materials it has provided on the Project, in the amount of \$2,097,576.15 and interest at the rate of 10% per annum from the date due until paid.

COUNT III – FORECLOSURE OF CONSTRUCTION LIEN

26. Diamond Refractory realleges the allegations contained in ¶¶ 1-25 above.

27. Diamond Refractory has a valid and effective Construction Lien against the Property for the total amount of \$2,097,576.15, together with pre- and post-judgment interest, costs, and attorney's fees as provided by law.

28. Diamond Refractory is entitled to an order foreclosing its Construction Lien on the Property, and ordering the Property to be sold by the Sheriff of Yellowstone County to satisfy the Construction Lien, together with pre- and post-judgment interest, costs, and attorney's fees as provided by law.

29. In the event there is a deficiency, Diamond Refractory is entitled to have judgment against Defendants entered for such deficiency.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Judgment against Defendants, jointly and severally, in the amount of
\$2,097,576.15;
2. Pre- and post-judgment interest accruing at 10% per annum;
3. Foreclosure of the Construction Lien and sale of the subject property
subject only to prior claims for taxes and warrants, if any, by the
Sheriff of Yellowstone County as directed by the court in the manner
for foreclosure sales under mortgages;
4. Costs and attorney's fees; and
5. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY

Plaintiff Diamond Refractory Services, LLC hereby demands a trial by jury on all issues
so triable.

Dated this 26th day of July, 2019

MURPHYMYERS, PLLC

By: _____

JESSE MYERS

*Attorney for Plaintiff Diamond Refractory
Services, LLC*

Verification

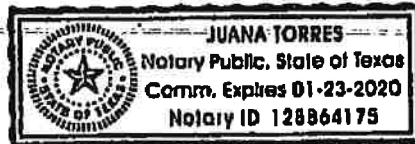
STATE OF TEXAS)
 :SS.
County of Harris)

Scott R. Creasman, being first duly sworn, upon oath, deposes and says that he has read the foregoing and the facts and matters contained therein are true, accurate, and complete to the best of his knowledge and belief.

Scott R. Creasman
Scott R. Creasman,
CFO of Diamond Refractory Services, LLC

SUBSCRIBED and SWORN to before me this 26th day of July, 2019 by Scott R. Creasman.

Juana Torres
Notary Public
Name: Juana Torres
My Commission Expires: 01-23-2020



CL

3881212

04/25/2019 09:39 AM Pages: 1 of 3 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone MT



CONSTRUCTION LIEN

Diamond Refractory Services, LLC ("Diamond Refractory"), 8412 Mosley Road, Houston, Texas 77075, claims a construction lien pursuant to Title 71, chapter 3, of the Montana Code Annotated.

Diamond Refractory claims this Construction Lien against the following described real property and improvements thereon in Yellowstone County, Montana, located at 700 ExxonMobil Road, and more particularly described as follows:

Parcel 1 of Certificate of Survey No. 2065, located in Section 24, Township 01 North, Range 26 East, MPM, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana.

The record owner of the above-described real property and the contracting owner is Exxon Mobil Corporation, 5959 Las Colinas Boulevard, Irving, Texas 75039-2298; c/o Jordan Root Exxon Mobil Corporation, P.O. Box 64106, Spring, Texas 77387-4106.

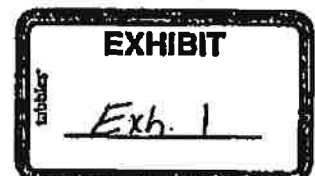
At the request of the contracting owner's agent, AECOM Energy & Construction, Inc., 1640 Lockwood Road, Billings, Montana 59101, Diamond Refractory provided Refractory Services including, but not limited to, materials, equipment and labor for installation of anchoring systems, and installation of Refractory for the 2018 FCC-Alky-Offsites Turnaround at the Exxon Billings Refinery. The amount remaining unpaid is \$2,372,568.48, Interest and attorney's fees continue to accrue as provided by law.

Diamond Refractory first furnished these services or materials on October 1, 2018 and last furnished services or materials on January 30, 2019. Diamond Refractory was not required to give notice of the right to claim a lien as required by § 71-3-531, MCA, because the project was commercial in nature and did not include the construction of any residence.

Dated this 24 day of April, 2019.

DIAMOND REFRACTORY SERVICES, LLC


SCOTT R. CREASMAN
CHIEF FINANCIAL OFFICER



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04/25/2019 09:39 AM Pages: 2 of 3 Fees: 5.00
Jeff Martin Clerk & Recorder, Yellowstone NT



STATE OF TEXAS)

)ss.

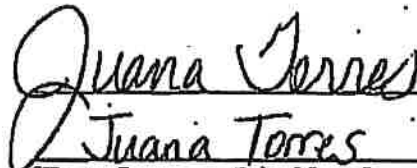
County of HARRIS)

MR. SCOTT R. CREASMAN, being first duly sworn, deposes and says:

That he is the Chief Financial Officer of Diamond Refractory Services, LLC named in the foregoing Construction Lien, that he has read the foregoing Construction Lien and knows the contents thereof; that the same contains a true and correct statement of the amount due Diamond Refractory Services, LLC for the materials or services furnished and described in the Construction Lien; and that upon information and belief, the foregoing Construction Lien correctly identifies the contracting owner and contains a correct description of the real property to be charged with the Construction Lien.

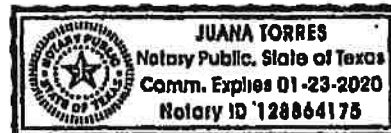

Scott R. Creasman, Chief Financial Officer
Diamond Refractory Services, LLC

This instrument was acknowledged before me on April 24th, 2019 by Scott R. Creasman as Chief Financial Officer of DIAMOND REFRACTORY SERVICES, LLC.


Juana Torres
[Type, Stamp, or Print Name]

(Seal)

Notary Public for the State of TEXAS
Residing at Harris County, Texas
My commission expires 01-23, 2020



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Jodi Martin Clerk & Recorder, Yellowstone MT



CERTIFICATE OF MAILING OF CONSTRUCTION LIEN

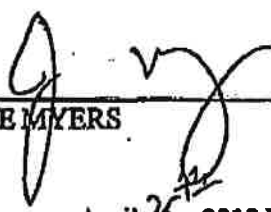
Pursuant to Mont. Code Ann. 71-3-534, I, Jesse Myers, hereby certified that on April 25th, 2019, a true and correct copy of the foregoing Construction Lien was duly served on the owner of record of the property named in the lien by mailing a copy of the lien by certified mail, postage prepaid, return receipt requested, addressed as follows:

EXXON MOBIL CORPORATION
22777 SPRINGWOODS VILLAGE PKWY
SPRING, TX 77389

EXXON MOBIL CORPORATION
700 EXXONMOBIL RD
BILLINGS, MT 59101

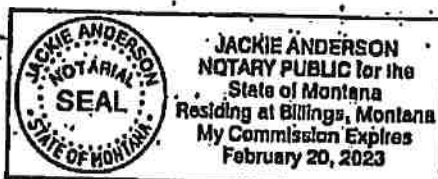
EXXON MOBIL CORPORATION
PO BOX 64106
SPRING, TX 77387

EXXON MOBIL CORPORATION
C/O CORPORATION SERVICE COMPANY
PO BOX 1691
HELENA, MT 59624

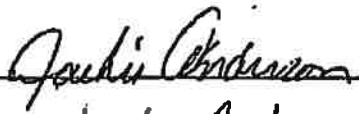


JESSE MYERS

This instrument was acknowledged before me on April 25th, 2019 by Jesse Myers.



(Seal)



Jackie Anderson
[Type, Stamp, or Print Name]

Notary Public for the State of Montana
Residing at Billings, MT
My commission expires 2/20, 2023

CERTIFICATE
STATE OF MONTANA } **SS**
County of Yellowstone

I hereby certify that this sheet, and all sheets identified by impression of my Official Seal, are each and all true and correct copies of originals filed in my office on

4/25/19
at 9:39 o'clock A M, under Document

Number 3881212

IN TESTIMONY WHEREOF, I have here unto set my hand and affixed my seal of

Office 4/25/19

JEFF MARTIN
County Clerk & Recorder

By: [Signature]
Deputy

